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IN THE

SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM, 1981

NO. 80-6280

CAROLYN HARRIS,

Appellant,

vs.

STATE OF GEORGIA,

Appellee.

APPEAL FROM THE SUPREME COURT OF GEORGIA

IN FORMA PAUPERIS

Guy E. Davis, Jr.
920 Northside Tower
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Attorney for Appellant

IN THE

SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM, 1981

NO. 80-6280

CAROLYN HARRIS,

Appellant,

vs.

STATE OF GEORGIA,

Appellee.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Appellant, Carolyn Harris, respectfully prays for leave to file the attached Appeal from the Supreme Court of Georgia without prepayment of cost and to proceed in forma pauperis pursuant to Rule 46 of the Supreme Court of the United States and 28 U.S.C §1915.

In support of this Motion, Appellant shows the following:

1.

Appellant privately retained Guy E. Davis, Jr., Attorney at Law, of Atlanta, Georgia to represent her in the trial of this case in Fulton Superior Court, Atlanta Judicial Circuit.

2.

Appellant requested and her attorney at trial agreed to pursue an appeal to the Georgia Court of Appeals on a reduced fee basis which Petitioner has been unable to pay.

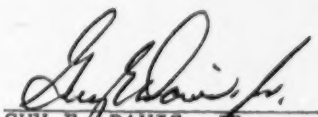
3.

While Appellant is employed and has some funds available to her, Appellant is unable to pay attorneys' fees, fees, costs or give security without extreme hardship on herself and infant

daughter, therefore her attorney at trial has agreed to pursue the instant Appeal without fee.

WHEREFORE, Appellant prays for leave to proceed in forma pauperis.

Respectfully submitted,



GUY E. DAVIS, JR.
Attorney for Appellant

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(404) 256-0703

IN THE

SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM, 1981

NO. 80-6280

CAROLYN HARRIS,

Appellant,

vs.

STATE OF GEORGIA,

Appellee.

AFFIDAVIT IN SUPPORT
OF MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

I, Carolyn Harris, being first duly sworn, depose and say that I am the Carolyn Harris in the above-entitled case; that in support of Motion to proceed on appeal without being required to pre-pay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore and that I believe that I am entitled to redress.

I further swear that I am a citizen of the United States and the State of Georgia and that the statements made below relating to my ability to pay the costs of pursuing the appeal are true.

1. I have been employed by Wells Fargo Alarm Services, 180 Memorial Drive, S.W., Atlanta, Georgia 30303 since June 28, 1979, and earn $195.00 per week or approximately $160.00 disposable income per week. I was not employed between October 31, 1980 and February 9, 1980, as I was on Maternity Leave.

2. I have no other sources of income.

3. I have no savings account and the present balance of my checking account is approximately $15.00.

4. I own no real estate, stocks, bonds, notes, or other valuable property excluding ordinary household furnishings and clothing. I own a 1975 Cutlass Oldsmobile which is presently being held at L & H Body Shop in Atlanta, Georgia, in lieu of payment of $300.00 for repairs.

5. My daughter, Amber Alanna Harris, born December 9, 1980, is totally dependent upon me for support and I pay a neighbor who cares for her while I am working.

6. A fine of $5,000.00 was imposed in this case which I am ordered to pay through the Fulton County Probation office and must make payment as directed as soon as my probation officer determines that my financial position is such that I can do so.

7. I have been unable to pay my attorney for prosecuting my Appeal to the Court of Appeals of Georgia or for his appearance before the Supreme Court of Georgia, but he has agreed to pursue the instant Appeal without fee.

I understand that a false statement or answer to any questions in this Affidavit will subject me to penalties for perjury.

Carolyn Harris
CAROLYN HARRIS

Subscribed and sworn to before me
this 26th day of February, 1981.

Notary Public

Notary Public, Georgia, State at Large
My Commission Expires May 29, 1984

IN THE

SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM, 1981

NO. 80-6280

CAROLYN HARRIS,

Appellant,

vs.

STATE OF GEORGIA

Appellee.

APPEAL FROM THE SUPREME COURT OF GEORGIA
IN FORMA PAUPERIS

JURISDICTIONAL STATEMENT

QUESTIONS PRESENTED

I. WHETHER GEORGIA CODE ANNOTATED SECTION 27-205(915 P.C.) IS REPUGNANT TO THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BY ITS FAILURE TO REQUIRE THAT SEARCH WARRANT ISSUE OR TO IMPOSE A STANDARD OF REASONABLENESS UPON THE EXERCISE OF DISCRETION BY LAW ENFORCEMENT AGENTS SEEKING TO EXECUTE AN ARREST WARRANT IN ORDER TO SAFEGUARD THE PRIVACY AND SECURITY OF INDIVIDUALS IN THEIR HOMES AGAINST ARBITRARY INVASION.

II. WHETHER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION REQUIRES THAT LAW ENFORCEMENT OFFICERS, IN THE ABSENCE OF CONSENT OR EXIGENT CIRCUMSTANCES, OBTAIN A SEARCH WARRANT PRIOR TO ENTERING AND SEARCHING THE RESIDENCE OF A THIRD PARTY FOR THE SUBJECT OF AN ARREST WARRANT.

III. WHETHER IT IS REPUGNANT TO THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION THAT LAW ENFORCEMENT OFFICERS RELY ON UNVERIFIED ADDRESS INFORMATION INSCRIBED ON THE OUTSIDE OF AN ARREST WARRANT, ROUTINELY ROUTED TO THEM FOR EXECUTION, IN FORMULATING THE BELIEF THAT EITHER OF TWO LISTED RESIDENTIAL ADDRESSES IS THE DOMICILE OF THE SUBJECT FOR WHOM THE WARRANT WAS ISSUED.

IV. WHETHER THE TRIAL COURT ERRED IN HOLDING THAT THE INFORMATION KNOWN TO OFFICERS SEEKING TO EXECUTE AN ARREST WARRANT WAS SUFFICIENT TO GIVE THEM REASON TO BELIEVE THAT THE SUBJECT OF THE WARRANT WAS WITHIN THE PREMISES SEARCHED AND IN OVERRULING APPELLANT'S MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO SUCH ENTRY AND SEARCH.

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Payton vs. New York, ____ U S _____, 63 L Ed 2d 639, 100 S Ct _____ (April 15, 1980)

United States vs. Gaultney, 606 F2d 540, 544 (1) (5th Cir. 1979) (Cert. Pending)

THE OPINIONS BELOW

The opinion of the Georgia Court of Appeals is reported at 155 Ga. App. 278, 270 S.E.2d 854 (1980) and a copy thereof is set forth in Appendix A.

The opinion of the Supreme Court of Georgia is reported at 246 Ga. 759, 272 S.E.2d 719 (1980) and a copy thereof is set forth in Appendix B.

JURISDICTION

The Judgment of the Supreme Court of Georgia was entered on the 2nd day of December, 1980. The Notice of Appeal was filed in the Supreme Court of Georgia on the 26th day of February, 1981. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code Section 1257(2).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The pertinent portions of the United States Constitution are as follows:

> THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES SHALL NOT BE VIOLATED AND NO WARRANTS SHALL ISSUE BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED AND THE PERSON AND THINGS TO BE SEIZED.

The pertinent Statute of the State of Georgia, Georgia Code Annotated Section 27-205(915 P.C.) provides as follows:

> IN ORDER TO ARREST UNDER A WARRANT CHARGING A CRIME, THE OFFICER MAY BREAK OPEN THE DOOR OF ANY HOUSE WHERE THE OFFENDER IS CONCEALED.

STATEMENT OF THE CASE

I.

HISTORY OF THE CASE

On the 18th day of May, 1979, an Indictment was returned by the Fulton County Grand Jury charging the Appellant with three counts Violation Georgia Controlled Substances Act:

Count No. 1 - Possession of Cocaine;

Count No. 2 - Possession of Diazapam (Valium); and

Count No. 3 - Possession of less than one ounce of marijuana.

On the 23rd day of July, 1979, Appellant's Amended Motion to Suppress Evidence and For the Return of Seized Personal Property was heard and overruled following an evidentiary hearing before the Honorable Luther Alverson, Judge, Fulton Superior Court (T.44). A trial was then had before the Court without a jury (T.2 & 44) and following a repetition by Deputy Paul Adams of his earlier testimony on the hearing of Appellant's Amended Motion to Suppress Evidence and For the Return of Seized Property (T.45-54) the Assistant District Attorney and counsel for appellant entered into stipulations of the testimony of Detective C. L. Horton, Jr., Atlanta Police Department Narcotics Division, and James Panter, of the Georgia State Crime Laboratory, preserving for review on appeal objections to the admissability of such evidence incorporating all grounds previously raised and overruled at the hearing on Appellant's Amended Motion to Suppress Evidence and For the Return of Seized Personal Property (TR.57-61).

After a verdict of guilty by the Court on all counts, the sentences imposed were as follows:

Five years confinement on Count 1, 5 years confinement on Count 2, twelve months confinement on Count 3, all concurrent,

a fine of $5,000.00 and all probated under the provisions of the First Offender Act, Georgia Code Annotated §27-2727.

Notice of Appeal was filed in the office of the Clerk of the Superior Court of Fulton County on the 20th day of August, 1979, and an Amendment to Notice of Appeal was filed on the 14th day of September, 1979, appealing the conviction and sentence to the Supreme Court of Georgia.

The judgment of convictions and sentences were appealed to the Supreme Court of Georgia for the reason that it has jurisdiction in all cases in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question pursuant to Article VI, Section II, Paragraph IV, of the Constitution of the State of Georgia.

On December 12, 1979, the Supreme Court of Georgia, without opinion, ordered the case transferred to the Georgia Court of Appeals. A copy of this Order is set forth in Appendix C.

The Georgia Court of Appeals, apparently alerted by Appellant's brief of the case of Payton vs. New York, ____U S ____, 63 L Ed 2d 639, 100 S Ct ____ (April 15, 1980) then pending in this Court, rendered its decision on July 14, 1980, reversing the trial court. Copy of this decision is set forth in Appendix A.

The Supreme Court of Georgia granted certiorari by Order dated September 11, 1980, a copy of which is set forth in Appendix D. On December 2, 1980, the Supreme Court of Georgia entered the judgment which is the subject of this Appeal, a copy of which is set forth in Appendix B.

On February 5, 1981, the Georgia Court of Appeals vacated its decision and affirmed the judgment of the trial court in a brief opinion, a copy of which is set forth in Appendix E.

II.

STATEMENT OF FACTS

On the 30th day of March, 1979, the Honorable Phillip F. Ethridge, Judge of the State Court of Fulton County, issued Arrest Warrant No. 12177 for one Charles Davis, aka "Fat Charles", charging him with the offense of Theft by Taking. The warrant, State's Exhibit No. 1, contained on the front of it the following:

> "Charles Davis, aka Fat Charles, race - B, age - 28, Sex - M, address (1) 1717 Centra Villa S.W., B-65, (2) 4464 Danforth Road, S.W., Atlanta, Georgia" (T.66 and 67).

The manner in which the two addresses for Charles Davis (no relation to counsel in this case) are set forth in the outside of the Warrant, "(1)" and "(2)", admits of no reasonable interpretation other than that it was intended that two residential addresses be reflected for otherwise the numerals would have been superfluous. A copy of the Warrant is set forth in Appendix F.

Paul Adams and his partner, J. L. Shockley, are Fulton County Deputy Sheriffs assigned to a warrant car (T.4 and 6). Deputy Adams testified that he picked up the warrant for Charles Davis' arrest at the sheriff's office and went out to serve it without knowing anything about the people involved other than the information provided in the warrant (T.12 and 13, 66 and 67). The Deputies first went to 1717 Central Villa Drive, S.W., No. B-65, appellant's residence, because "that was the No. 1 address on the warrant" (T.11).

Upon arrival, the Deputies "banged on the door probably five or six minutes" before the appellant came to the door (T.6). He later testified that she answered the door "after several minutes" (T.47).

"We told her we had a warrant for Charles Davis, asked if he was there. She said he was not. We felt that he was because it took her such a good while to come to the door" (T.7).

During the trial Deputy Adams testified that when she answered the door, the appellant was wearing a robe and appeared to have just got out of bed. When asked if such circumstances might explain any delay there might have been in answering the door Deputy Adams stated, "possibly, possibly not". Although he was uncertain as to the time of his arrival at the appellant's apartment, Mr. Adams stated that it was probably around 9:30 as the warrant for Charles Davis was the first he had served that morning (T.55).

After the appellant admitted knowing Charles Davis,

"We told her we had a warrant for his arrest, told her we would search the apartment to see if he was there" (T.7).

Deputy Adams permitted the appellant to read the warrant and she then asked whether or not they had a search warrant.

"We told her that we didn't have to have a search warrant, chat all that was necessary under the State law was a warrant at that address for the person . . . She stepped back. We proceeded to search for the subject" (T.12).

During their search the deputies looked in the kitchen, behind the doors, and in the closets (T.7 and 8) as "Over the past years we have found people under beds, between the mattresses, in attics, in refrigerators, in little potato bins under sinks . . ." (T.17 and 53).

Anticipating that "Fat Charles" might be under a bed only seven inches off of the floor (T.16)

"Looked under the bed. We saw a record cover, and on the album cover was a spoon containing

residue, a sifter containing residue, and some scales" (T.8).

"We took it, you know, just pulled it out from under the bed, showed to to my partner. We advised Miss Harris, you know, that would give us probable cause to search the apartment. We told her, you know, she might as well give us the rest of her stuff. She was leaning against the dresser. She reached behind her, gave us a jar. Looked like it might have been a peanut butter jar or mayonnaise jar that, I guess, was about four or five inches tall, had blue crystal like substance in it" (T.9).

The deputies then called the Atlanta Police Department Narcotics Division and spoke to Detective C. L. Horton, Jr. and asked him to meet them (T.20).

When he arrived and entered appellant's apartment he was shown the suspected drugs and paraphernalia which had been seized by the deputies (T.21 and 22).

The appellant was turned over to the Narcotics Detectives and Detective Horton's partner reiterated that she was under arrest (T.23). Detective Horton testified that appellant was advised of her Miranda Rights and that he told her that she did not have to allow the detectives to search without a search warrant (T.25) and that he so informed her "Whether I felt that she understood it or not, simply for the sake of fairness" (T.37).

"Miss Harris originally took a very adverse stance. By that I mean as we were there and as we spoke she became very warm and open in her communication, a very pleasant person to be around, but originally she was not that cordial. It could be from having

so many strangers in her apartment or whatever, but originally she was not as open as she was later" (T.36).

By this point the appellant had exchanged her robe for "slacks and some sort of top" and Detective Horton knew nothing of what might have occurred earlier to upset her (T.36).

Detective Horton then found a bottle of Lactose and again informed appellant she could demand a search warrant and she is said to have indicated that she understood (T.27). When he discovered the Diazapam (Valium) in the bathroom she is said to have told him to stop (T.28). Detective Agan then called Lewis Arcangeli and asked that he obtain a search warrant for them giving him the information which appears on the search warrant (T.68).

After Detective Arcangeli had obtained the search warrant and delivered it to Detective Horton and Agan, the search was resumed and additional cocaine and marijuana were found and seized (T.29-33).

Charles Davis was found not to be in appellant's apartment (T.12).

A determination was made by the searching officers that the appellant had rented the apartment and that it was her residence (T.23-24).

III.

STAGE OF PROCEEDINGS AT WHICH QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED, METHOD OR MANNER OF RAISING THEM, AND HOW THEY WERE PASSED UPON BY THE COURTS BELOW

For clarity, the QUESTIONS PRESENTED are treated separately.

I. WHETHER GEORGIA CODE ANNOTATED SECTION 27-205(915 P.C.) IS REPUGNANT TO THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BY ITS FAILURE TO REQUIRE THAT SEARCH WARRANT ISSUE OR TO IMPOSE A STANDARD OF REASONABLENESS UPON THE EXERCISE OF DISCRETION BY LAW ENFORCEMENT AGENTS SEEKING TO EXECUTE AN ARREST WARRANT IN ORDER TO SAFEGUARD THE PRIVACY AND SECURITY OF INDIVIDUALS IN THEIR HOMES AGAINST ARBITRARY INVASION.

This question was first raised in Paragraph Twelve of Appellant's Amended Motion to Suppress Evidence. At the hearing on said Motion, Deputy Adams testified on cross examination

> "we told her that we didn't have to have a search warrant, that all that was necessary under the State law was a warrant at that address for the person . . . she stepped back. We proceeded to search for the subject" (T.12).

At the completion of the evidence, the trial court ruled on the applicability and constitutionality of the Statute in question together with all other issues raised as follows:

> "Well, I think under the circumstances and the evidence that I have heard in this Motion that they had the right to do so in searching for the - - searching for the subject of the arrest warrant. The delay of the defendant in this case in answering, and together with their experience under the circumstances and what they discovered in the beginning there was sufficient, and I think the Georgia Statute is Constitutional" (T.44).

The judgments of conviction and sentences were appealed to the Supreme Court for the reason that it has jurisdiction in all cases in which the constitutionality of any laws of the State of Georgia or of the United States is drawn in question pursuant to Article VI, Section II, Paragraph IV of the Constitution of the State of Georgia.

On appeal, Appellant's Enumeration of Error I was as follows:

> THE TRIAL COURT ERRED IN FAILING TO DECLARE GEORGIA CODE ANNOTATED §27-205 UNCONSTITUTIONAL AS BEING VIOLATIVE OF THE FOURTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES IN THAT THE STATUTE FAILS TO REQUIRE THAT A SEARCH WARRANT ISSUE OR TO IMPOSE A STANDARD OF REASONABLENESS UPON THE EXERCISE OF DISCRETION BY LAW ENFORCEMENT AGENTS IN ORDER TO SAFEGUARD THE PRIVACY AND SECURITY OF INDIVIDUALS AGAINST ARBITRARY INVASION (T.44).

Without opinion, the Supreme Court of Georgia transferred the case to the Georgia Court of Appeals (Appendix C) who lacked

jurisdiction to decide the constitutional question and who reversed the trial court on other grounds in a full bench decision, 6-3 (Appendix A).

Granting the Petition for Certiorari by the State of Georgia, the Supreme Court of Georgia again declined to review the decision of the trial court on this question and reversed the Georgia Court of Appeals unanimously.

On appeal, Appellant's Enumeration of Error II was as follows:

> 'THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED PURSUANT TO UNREASONABLE SEARCHES AND SEIZURES AT THE RESIDENCE OF APPELLANT ON THE 3RD DAY OF APRIL, 1979, AND ERRED IN ADMITTING SUCH EVIDENCE AT TRIAL (T.44, 49, 52 and 57-61)."

QUESTIONS PRESENTED II, III, and IV herein are subsidiary questions fairly included in Appellant's Enumeration of Error II and were pled, ruled upon by the trial court, enumerated on appeal, and urged and argued in Appellant's brief.

II. WHETHER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION REQUIRES THAT LAW ENFORCEMENT OFFICERS, IN THE ABSENCE OF CONSENT OR EXIGENT CIRCUMSTANCES, OBTAIN A SEARCH WARRANT PRIOR TO ENTERING AND SEARCHING THE RESIDENCE OF A THIRD PARTY FOR THE SUBJECT OF AN ARREST WARRANT.

This question was first raised in Paragraphs 11(b) and 12 of Appellant's Amended Motion to Suppress Evidence, overruled by the trial court (T.44) and urged and argued in the Brief of Appellant (PP. 8, 10 and 18).

In Paragraph 2, of the decision of the Supreme Court of Georgia, the Court specifically stated:

> "Point 2. Whether the premises searched were the residence of the defendant and Charles Davis or of the defendant alone is without legal significance in this case." '[W]hen an officer holds a valid arrest warrant and reasonably believes that its subject is

within premises belonging to a third party, he need not obtain a search warrant to enter for the purpose of arresting the subject'" United States v. Gaultney, 606 F2d 540, 544 (1) (5th Cir. 1979). . . .

There has been a suggestion that Gaultney supra, is currently before the United States Supreme Court on Certiorari, having been recently argued.

III. WHETHER IT IS REPUGNANT TO THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION THAT LAW ENFORCEMENT OFFICERS RELY ON UNVERIFIED ADDRESS INFORMATION INSCRIBED ON THE OUTSIDE OF AN ARREST WARRANT, ROUTINELY ROUTED TO THEM FOR EXECUTION, IN FORMULATING THE BELIEF THAT EITHER OF TWO LISTED RESIDENTIAL ADDRESSES IS THE DOMICILE OF THE SUBJECT FOR WHOM THE WARRANT WAS ISSUED.

This Question was developed at the hearing on the Motion to Suppress (T.11), rejected by the Georgia Court of Appeals in Division 1, page 3 of the Opinion, and accepted and included by the Supreme Court of Georgia in its decision at Paragraph 4 as significant to the question of the domicile of Charles Davis being that of Appellant, who questions said information being so considered.

IV. WHETHER THE TRIAL COURT ERRED IN HOLDING THAT THE INFORMATION KNOWN TO OFFICERS SEEKING TO EXECUTE AN ARREST WARRANT WAS SUFFICIENT TO GIVE THEM REASON TO BELIEVE THAT THE SUBJECT OF THE WARRANT WAS WITHIN THE PREMISES SEARCHED AND IN OVERRULING APPELLANT'S MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO SUCH ENTRY AND SEARCH.

This Question was first raised in Paragraphs 3 and 11(a) of Appellant's Amended Motion to Suppress Evidence and overruled by the trial court (T.44). On appeal, Appellant urged and argued the question, the Georgia Court of Appeals agreed with Appellant in Division 1 of its Opinion and the Supreme Court of Georgia reversed.

NOTE

The State of Georgia apparently concedes that if the initial entry, search, and arrest of appellant were illegal, then any

evidence so seized should be suppressed from use as evidence, and there being no break in the "causal connection" between the illegal entry, search and arrest of appellant and any subsequent alleged "consent", evidence seized pursuant thereto or pursuant to a search warrant later issued must likewise be suppressed under the rationale of Brown vs. Illinois, 422 US 590 (1975); Dunaway vs. New York, 442 US 200 (99 SC 2248 , 60 LE 2d 824) (1979).

In the event that this issue has not been settled in the instant case Appellant respectfully requests that its appearance in the jurisdictional statement be treated as a QUESTION PRESENTED.

PLENARY CONSIDERATION

Although the questions presented are believed to be and are urged as substantial in nature, it is respectfully submitted that the Court would experience no difficulty in deciding the QUESTIONS PRESENTED herein based upon the opinions of the Supreme Court of Georgia and the Georgia Court of Appeals together with a relatively brief record, 76 page transcript, and the briefs of counsels for the State of Georgia and Appellant.

IMPORTANCE OF THE QUESTIONS PRESENTED

The twenty five words comprising Georgia Code Annotated Section 27-205 are as chilling to the Fourth Amendment of the United States Constitution as the reality of their frequent and liberal application is to the citizens of Georgia.

Absent consent or exigent circumstances, the image of law enforcement would benefit substantially by interposing the judgment of a neutral and detached magistrate between law enforcement and the citizen it has sworn to protect. The words "pull and a miss" over a Motorola radio should have long since joined the "arrest box", Circa 1900, on display in the Cyclorama building at Grant Park.

The Supreme Court of Georgia observed that the Georgia Court of Appeals erroneously referred to "probable cause to believe that Davis was at the address at the time of entry," stating an officer may enter the residence of the person named in the arrest warrant or of a third person if he "reasonably believes" or has "reason to believe" that the subject is within. Payton supra; the Court further observed:

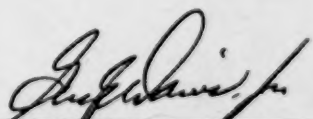
> "Reasonable belief embodies the same standards of reasonableness [as does probable cause] but allows the officer, who has already been to the magistrate to secure an arrest warrant, to determine that the suspect is probably within certain premises without an additional trip to the magistrate and without exigent circumstances." Gaultney, supra, at P. 544.

The Court's reasoning presupposes that he who applies for a warrant before a magistrate is the law enforcement officer who will execute it. In the instant case, a private citizen sought the arrest of Charles Davis and the officer, conducting no investigation whatsoever, sought to serve it on unverified information. In this day of increased specialization, particularly in police work, it is not unusual to find "warrant cars" or Fugitive and SWAT teams seeking to execute warrants with the benefit of no more information than was possessed by the officers in the instant case.

CONCLUSION

For the above-stated reasons, the Appellant respectfully requests that the Court review the merits of Appellant's contentions.

Respectfully submitted,



GUY E. DAVIS, JR., Attorney for Defendant-Appellant

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IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA

CAROLYN HARRIS, Appellant	)	
Vs.	)	CASE NO. 36679
THE STATE OF GEORGIA, Appellee	)	

NOTICE OF APPEAL

Notice is hereby given that Carolyn Harris, Defendant above named, pursuant to Title 28, United States Code Section 1257(2), hereby appeals to the Supreme Court of the United States from the judgment of the Supreme Court of Georgia which was entered in this action on the 2nd day of December, 1980.

GUY E. DAVIS, JR.
Attorney for Carolyn Harris

CERTIFICATE OF SERVICE

I hereby certifiy that I have this day served a copy of the within and foregoing Notice of Appeal to Mr. Lewis R. Slaton, District Attorney, 301 Fulton County Courthouse, Atlanta, Georgia 30303 and to the Clerk, Court of Appeals of Georgia, by hand delivery.

This the 26th day of February, 1981.

GUY E. DAVIS, JR.

920 Northside Tower
6065 Roswell Road, N.E.
Atlanta, Georgia 30328
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RECEIVED BY HAND DELIVERY
AND FILED:
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SUPREME COURT OF GEORGIA

JUL 14 1980

59506. HARRIS v. THE STATE [Mc-54 to Sm]

SMITH, Judge.

Appellant appeals her conviction for possession of cocaine, valium, and marijuana, asserting, inter alia, that the evidence upon which her conviction is based was obtained in violation of her Fourth Amendment rights. We reverse.

On March 30, 1979, an arrest warrant was issued for "Charles Davis aka Fat Charles," who was wanted in connection with an alleged theft by taking. The warrant listed both an "Address" and a "Business Address." The "Address" on the warrant was listed as "Centra Villa Apts., Apt. B-65, 1717 Centra Villa S.W."[1]

The police arrived at the "Address" at approximately 9:30 a.m. on Tuesday, April 3, 1979. They knocked on the door, and approximately five minutes later, appellant answered the door in a housecoat, appearing as if she had been sleeping. The police informed appellant that they had a warrant for Davis and asked her if she knew

---

[1]This is the only evidence in the record that Davis in fact was living or, indeed, had ever lived at the above-stated address.

Appendix A

him and if he was there. Appellant stated that she knew Davis and that he was not there. The police then told appellant that they would search the apartment in order to find him. Appellant asked whether the police had a search warrant. She was told "that we didn't have to have a search warrant, that all that was necessary under the state law was a warrant at that address for the person." The police then searched the apartment. Under a bed, police discovered certain drug paraphernalia: scales, and a sifter and a spoon containing residue of a white substance. Appellant was then advised that "she might as well give us the rest of her stuff," whereupon she produced a peanut butter jar or mayonnaise jar "four or five inches tall" which had a blue crystal like substance in it and "a cellophane containing white powdery substance." Narcotic agents were then called who began a systematic search of the apartment contending that appellant gave them permission to do so. When appellant later withdrew "permission" to search the apartment, a search warrant was obtained and the search continued. A quantity of lactose, used as "a cutting agent in cocaine," and quantities of several controlled substances such as cocaine, diazepam and marijuana were discovered. Charles Davis was not found in the apartment.

1. Appellant asserts that the motion to suppress should have been granted. We agree.

The legality of the search in the instant case depends upon whether the police had a right to enter the apartment in order to locate Charles Davis. The state has not demonstrated that the search was conducted with appellant's voluntary consent. See Schneckloth v. Bustamonte, 412 US 218 (93 SC 2041, 36 LE2d 854) (1973); see also Dunaway v. New York, 442 US 200 (99 SC 2248 , 60 LE2d 824) (1979).

Our constitution mandates that, in order for law enforcement officers to enter a residence for the purpose of effecting an arrest, they must have reasonable grounds to believe that the suspect is within. Payton v. New York, US (SC , LE2d) (1980) [48 USLW 4375]; United States v. Cravero, 545 F2d 406 (5th Cir. 1977).

To hold that the police had "reasonable grounds" to believe that Davis was inside appellant's apartment would, in our view, render the term virtually meaningless. The evidence adduced on the motion to suppress established, at most, that the police had reasonable grounds to believe that Davis might reside at the stated address.

Certainly, it cannot be argued that the mere presence of the address on the information sheet which accompanied Davis' arrest warrant furnished probable cause to believe that Davis was at the address at the time of entry.[2] As stated in Payton v. New York, supra at 4383: "[F]or Fourth Amendment purposes an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." (Emphasis supplied.)

In addition, we fail to see how any conduct of appellant in answering the door gave rise to reasonable

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[2]As indicated above, the arrest warrant listed both an "Address" and a "Business Address." It would seem far more likely that an individual would be at his place of business or work at 9:30 a.m. on a weekday than at his residence. However, in the instant case, the police first went to the residential "Address."

grounds to believe that Davis was inside. Under the circumstances, the slight delay in answering the door was entirely understandable. When appellant answered the door, she was dressed in a housecoat and appeared to have been asleep. There is nothing in the record to give rise to a reasonable suspicion that appellant was not telling the truth when she stated that Davis was not there. On the basis of this record, any suspicion as to appellant's veracity was wholly unfounded. Indeed, appellant was telling the truth--Davis was not found at appellant's residence.

It is apparent that the state has failed to satisfy its burden of proof on the motion to suppress. State v. Thomas, 150 Ga. App. 170 (257 SE2d 27) (1979). Under the evidence, the police entry into the residence was in violation of appellant's constitutional rights. The motion to suppress should have been granted.

2. In view of our holding in Division 1 of this opinion, the remaining enumeration of error need not be considered.

Judgment reversed. Quillian, P. J., Shulman, Birdsong, Carley and Sognier, JJ., concur. Deen, C. J., McMurray, P. J., and Banke, J., dissent.

59506. HARRIS v. THE STATE. McM-54
(transferred to Sm)

McMURRAY, Presiding Judge, dissenting.

This case involves the possession of certain controlled substances. Contraband was found in defendant's possession when two Fulton County deputy sheriffs attempted to serve an arrest warrant on one Charles Davis, a/k/a "Fat Charles," at one of two listed addresses shown on the arrest warrant for Davis.

The majority here assumes, without evidence to support the assumption, that this was not also the residence of Davis but only that of the defendant and that the officers, believing Davis was present in defendant's apartment, proceeded to search it based upon the arrest warrant for Davis. From the evidence here it is my opinion that the court, as the trier of fact, was authorized to believe that the officers had probable cause to believe Davis was present at this address. I now set forth the evidence upon which this search was based.

Deputy sheriffs arrived at approximately 9:30 a.m. and "banged" (knocked) on the door. It was five or six minutes before defendant answered the door. The officers told defendant they had a warrant for Charles Davis and asked if he was there. Defendant stated that he was not. The deputy sheriffs again told defendant that they had a warrant for Charles Davis' arrest and told her they would search the apartment to see if he was there. The defendant inquired of the deputy sheriffs whether they had a search warrant, and they replied that they did not need to have a search warrant to search the apartment for Charles Davis.

The deputies showed the defendant the arrest warrant and proceeded to search the apartment, looking in the kitchen, behind the doors, and in the closets. Under the bed the deputies discovered certain drug paraphernalia, scales, and a sifter and a spoon containing residue of a white substance. Defendant was then advised that "she might as well give us the rest of her stuff," whereupon she produced a peanut butter jar or mayonnaise jar "four or five inches tall" which had a blue crystal like substance in it and "a cellophane containing white powdery substance." Narcotic agents were then called who began a systematic search of the apartment contending that the defendant gave them permission to do so, but when she later withdrew permission to search the apartment they did obtain a

search warrant and continued their search. A quantity of lactose, used as "a cutting agent in cocaine," and quantities of several controlled substances such as cocaine, diazepam and marijuana were discovered by officers (narcotic agents) of the Atlanta Police Department who had been called to the scene by the deputy sheriffs. Charles Davis, for whom the arrest warrant was issued, was not found in the apartment, but numerous articles of clothing, both male and female, were found in the apartment which was occupied at that particular time by the defendant, a female.

Defendant was indicted in Count 1 for the unlawful possession of cocaine; in Count 2 for the unlawful possession of diazepam, and in Count 3 for less than one ounce of marijuana.

Following the denial of defendant's motion to suppress the evidence discovered during the search she was convicted and appeals.

In my opinion the warrant officers (deputy sheriffs) had ample authority to believe this was the apartment of Davis even though during the hearing there was some evidence presented that it was rented by the defendant. The officers in seeking to serve a felony warrant against Davis for the theft of an automobile proceeded to the address of the apartment as the first location where Davis might be found.

The defendant argues that the deputies had no information whatsoever from which a person might reasonably infer that the man they sought was on the premises. Further, they went to this apartment because it was located at one of the two addresses given on the face of the warrant, and the several minutes it took for the defendant, clothed in a robe, to answer the knock at her door and her admission that she knew Charles Davis and her denial that he was on the premises was insufficient information upon which the officers could base a decision to enter and search for him.

The state argues that the defendant's delay in answering the door at the address on the warrant gave the deputy sheriffs probable cause to believe that Davis was within, although the defendant was dressed in a housecoat and could have been asleep. Upon answering the door the defendant had acknowledged knowing the fugitive whom the deputies sought and stated that he was not present. While there was some evidence of a permissive search by the deputy sheriffs and later the narcotic officers, nevertheless, this case turns upon whether the officers, at the time of their entry under cover of authority of law, had probable cause to believe that Davis was hiding in the residence. The defendant did not give the deputies permission to search until after their entry and initial discovery of possible contraband.

The officers fully advised her that they did not have to have a search warrant when they entered the residence with the arrest warrant. While looking for the said Davis named in the arrest warrant these officers found items which would render the defendant suspect of being involved with the possession of controlled substances. It is noted that she gave them a jar of suspected narcotics after they discovered the drug paraphernalia, and she may have thereafter eventually consented to some portions of the search of her dwelling, that is, after the initial discovery of the drug paraphernalia. But the state does not demonstrate any voluntary consent was given for the initial entrance and search of the apartment which must be based on the arrest warrant. See Schneckloth v. Bustamonte, 412 U. S. 218 (93 SC 2041, 36 LE2d 854). Hence all of the controlled substances discovered by the law enforcement officers during their search of the apartment stem directly from the entry by the deputy sheriffs.

In the recent case of Payton v. New York, U. S. (SC , LE2d) [No. 78-5420 and No. 78-5421, decided April 15, 1980, cited 48 U. S. Law Week 4375 through 4388], which turns on other facts, that court stated that "for Fourth Amendment purposes an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the

suspect lives when there is reason to believe the suspect is within." Consequently, we have for decision here the issue of whether or not the officers in entering the dwelling had probable cause to suspect that he was hiding inside. A search is valid and the proceeds of the search admissible where officers reasonably believe they have probable cause to make an arrest and that items involved in a robbery are located in the apartment searched. Compare Hill v. California, 401 U. S. 797 (91 SC 1106, 28 LE2d 484).

The officers testified that in serving warrants it was not uncommon for them to find the person named in the warrant hiding in closets, behind doors, or under beds. When they were searching for the said Davis the drug paraphernalia was found under the bed and when they told the defendant she might as well give us "the rest of her stuff, ... [s]he reached right behind her, [and] gave us a jar." This jar contained crystals used in keeping drugs dry and contained a cellophane package containing a white powdery substance.

When an officer holds a valid arrest warrant and reasonably believes that his subject is within the premises, even if it belongs to a third party, then he need not obtain a search warrant for the purpose of arresting the suspect. See Agnello v. United States, 269 U. S. 20 (46 SC 4, 70 LE 145). There was evidence here that this was the dwelling of the defendant as

well as that of the man for whom the officers were searching since both male and female clothing were found in the dwelling. A valid arrest warrant confers authority upon officers to enter a suspect's home to execute the warrant. See United States v. Hammond, 585 F2d 26, 27; and this authority is conditioned upon the existence of probable cause to believe the suspect is in the dwelling. United States v. Cravero, 545 F2d 406, 414 (cert. denied, 433 U. S. 915).

As there was evidence from which the court, as the trier of fact in the case sub judice, could decide that this was the residence of Davis and that the officers had probable cause to believe that he was present at the time of the entry with the arrest warrant, I do not believe the court erred in denying the motion to suppress. I would affirm the judgment.

I, therefore, respectfully dissent.

I am authorized to state that Chief Judge Deen and Judge Banke join in this dissent.

In the Supreme Court of Georgia Decided: DEC 2 1980

36679. THE STATE v. HARRIS.

UNDERCOFLER, Chief Justice.

Certiorari was granted to determine whether or not the Court of Appeals correctly reversed the order denying defendant's motion to suppress evidence.[1] We reverse.

The facts are succinctly stated in the opinion of the Court of Appeals.

1. On appeal from the denial of a motion to suppress evidence obtained through a search that the defendant contends was illegal, "the trial court's decision on questions of fact and credibility . . . must be accepted unless clearly erroneous." Woodruff v. State, 233 Ga. 840, 844 (3) (213 SE2d 689) (1975).

2. Whether the premises searched were the residence of the defendant and Charles Davis or of the defend nt alone is without legal significance in this case. "'[W]hen an officer holds a valid arrest warrant and reasonably believes that its subject is within premises belonging to a third party, he need not obtain a search warrant to enter for the purpose of arresting the subject.'" United States v. Gaultney, 606 F2d 540, 544 (1) (5th Cir. 1979). "If there is sufficient evidence of a citizen's

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[1] Harris v. State, 155 Ga. App. 278 (SE2d) (1980).

participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law. Thus, for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." Payton v. New York, U. S. (SC , LE2d , 48 LW 4375, 4383) (1980).

3. The Court of Appeals erroneously referred to "probable cause to believe that Davis was at the address at the time of entry." An officer may enter the residence of the person named in the arrest warrant or of a third person if he "reasonably believes" or has "reason to believe" that the subject is within. Payton, supra; Gaultney, supra. "Reasonable belief embodies the same standards of reasonableness [as does probable cause] but allows the officer, who has already been to the magistrate to secure an arrest warrant, to determine that the suspect is probably within certain premises without an additional trip to the magistrate and without exigent circumstances." Gaultney, supra, at p. 544. The Supreme Court of the United States apparently would agree with this reasoning of the Fifth Circuit.[2]

4. The arrest warrant referred to the premises searched as the residence of Charles Davis, the person named in the warrant. When the officers knocked at the door at approximately

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[2] "Finally, we note the State's suggestion that only a search warrant based on probable cause to believe the suspect is at home at a given time can adequately protect the privacy interests at stake, and since such a warrant requirement is manifestly impractical, there need be no warrant of any kind. We find this ingenious argument unpersuasive. It is true that an arrest warrant requirement may afford less protection than a search warrant requirement, but it will suffice to interpose the magistrate's determination of probable cause between the zealous officer and the citizen." Payton, supra, at p. 4383.

9:30 a.m. that Tuesday morning, the defendant took approximately five minutes to answer the door. She was wearing a housecoat and appeared to have been sleeping. The officers told her they had a warrant for Charles Davis and asked her if she knew him and if he was there. She admitted knowing Davis but stated he was not there. The officers then entered to search for Davis. Their search was confined to places where a person could hide. In their experience, persons hide under beds. Searching for Davis under the bed revealed the drug paraphernalia in plain view. We cannot say that the trial court's order denying the motion to suppress was clearly erroneous. The Court of Appeals erred in holding, in essence, that the evidence was not sufficient to give the officers reason to believe that Charles Davis was within the premises searched. The fact that the subject of the warrant was not present is legally irrelevant. Gaultney, supra, at p. 545.

Judgment reversed. All the Justices concur.

35582

SUPREME COURT OF GEORGIA

ATLANTA, December 12, 1979

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CAROLYN HARRIS V. THE STATE

From the Superior Court of Fulton County

It is ordered that this case be hereby transferred to the Court of Appeals.

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA, DEC 13 1979

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Hazel E. Hallford, Deputy Clerk.

36679

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

ATLANTA SEP 11 1980

Dear Sir:

Case No. 36679 The State v. Carolyn Harris

The Supreme Court today GRANTED

the writ of certiorari in this case. All the Justices concur.

THIS CASE WILL BE ASSIGNED TO THE NOVEMBER 1980, ORAL ARGUMENT CALENDAR.

The Court is particularly concerned with the following:

Division 1 of the opinion of the Court of Appeals

Briefs filed in the Court of Appeals are included in the record presented to this court. Additional briefs are not required but may be submitted.

Very truly yours,

Mrs. Joline B. Williams, Clerk

Appendix D

E

FEB 5 1981

59506. HARRIS (CAROLYN) v. THE STATE. McM-54 to 28

POPE, Judge.

The opinion of this court in Harris v. State, 155 Ga. App. 278 (270 SE2d 854)(1980) was reversed by the Supreme Court on certiorari (Case No. 36679, decided December 2, 1980) and remanded to this court for such further action as may be necessary.

In our previous opinion we did not reach the merits of appellant's other enumeration of error in which she contended that Code § 27-205 was unconstitutional as being violative of the Fourth and Fourteenth Amendments to the United States Constitution. However, this appeal was initially filed in the Supreme Court of Georgia and by order transferred to this court for decision. Inasmuch as all cases involving the constitutionality of any state law are solely within the jurisdiction of our Supreme Court and this case was transferred here, we deem that court to have determined that the constitutional issue was not properly raised or was otherwise not before the court on appellate review.

The judgment of this court is vacated and the judgment of the trial court is affirmed.

Judgment affirmed. Quillian, C. J., Deen, P. J., McMurray, P. J., Shulman, P. J., Banke, Birdsong, Carley, Sognier, JJ., concur.

Appendix E

04-03-84 118 245

BILL OF COSTS

For each warrant including affidavit . . . . . $ 2.50
" docketing each warrant 75
" arrest 6.00
" return of officer 1.00
" keeping prisoner 3.25
" taking bond 4.00
" taking testimony 2.50
" order requiring defendant to give bond in bastardy case 1.00
" order of commitment, discharge or dismissal 1.00
" entering any order 75
" motion to withdraw or dismiss warrant 1.00
" docketing same 75
" D. M. attendance 1.00
" certified copy of warrant 1.50
" certified copy of warrant under code sec. 38-627 . . . . . 2.50
" jail fees . . . . . $ _____
" Sheriff Bond . . . . . $ _____ 6.00
" " Arrest . . . . . $ _____ 8.00

Witnesses for the State

Name: _____
Address: _____
Name: _____
Address: _____
Name: _____
Address: _____

No. 12177

State Court of Fulton County

CRIMINAL WARRANT

THE STATE

versus

Charles Davis aka Fat Charles

Race	Age	Sex
B	26	M

(1) Address Centra Villa Apts Apt B-65
1717 Centra Villa S. W.

(2) Business 1465 Danforth RD S W
Atlanta, Ga.

Bond
$ 1,500.00

Charge
Vio Sec 26-1602, Ga Code,
Theft by Taking.

Prosecutor: Doris Yvonne Ward
Address 6 Rockmart Drive N W
Telephone No. 755-8200 lv message.
Business _____
Telephone No. _____
Notified: Date _____ Time _____
By whom _____
Party Notified _____

Attorney for Prosecutor _____
Telephone No. _____

Calendar Date and Number				

Reset to _____ 197__ Judge _____
Reason: _____

Reset to _____ 197__ Judge _____
Reason: _____

Reset to _____ 197__ Judge _____
Reason: _____

Reset to _____ 197__ Judge _____
Reason: _____

Special Instructions:

GEORGIA, Fulton County.
Executed the within warrant by arresting the defendant, this _____, 19__.
Prosecutor notified to appear _____, 19__.

_____
Arresting Officer

CRIMINAL WARRANT

STATE COURT OF FULTON COUNTY:
GEORGIA, Fulton County.

To any Sheriff, Deputy Sheriff, Coroner, Constable, or Marshal of said State – GREETING:

Doris Yvonne Ward ; makes oath before a Deputy Clerk of this Court (as authorized by Acts 1922, p.207) that Charles Davis aka Pat Charles (Hereinafter called the accused) did, at 3:15 P.M., on the 30TH day of MARCH, in the year 1979, in the county aforesaid, commit the offense of Vio Sec 26-1802, Ga Code, Theft by Taking.

in that said accused did at Preparation Imports, 712 Park Street S. W., Atlanta, Fulton County, Ga., unlawfully take a 1966 Mercedes Benz, 4 Dr Sedan 8 cylinder, Model 250S ID No. 10801212002242, License No. Ga GCZ 0558,3 with the intention of depriving the prosecutrix of said automobile. The value of this automobile is $5,000.00.

YOU ARE THEREFORE COMMANDED to arrest the body of the said accused, and bring him before me or some other judicial officer of this State, to be dealt with as the law directs. Herein fail not.

This MARCH 30th, 1979

Judge, State Court of Fulton County.

State Court of Fulton County.

GEORGIA, Fulton County:

After hearing evidence the accused is discharged

This , 19.

Judge, State Court of Fulton County.

Dismissed

This , 19.

Judge, State Court of Fulton County.

GEORGIA, Fulton County.

After hearing evidence it is ordered that accused give bond of $

Dollars for his appearance at

of said County, now in session, to answer to the Charge of

or in default that he be committed to jail.

This , 19.

Judge, State Court of Fulton County.

S-1
7-23-79
GA

State's Exhibit No. 1

NO. 80-6280

ORIGINAL COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

RECEIVED
MAY 8 - 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

CAROLYN HARRIS,

Appellant,

v.

STATE OF GEORGIA,

Appellee.

On Appeal to the Supreme Court of Georgia

BRIEF FOR THE APPELLEE IN OPPOSITION

HARRISON KOHLER
Assistant Attorney General
Counsel of Record

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

JOHN C. WALDEN
Senior Assistant
Attorney General

Please serve:

HARRISON KOHLER
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334

QUESTION PRESENTED

Does the Fourth Amendment prohibit a law enforcement officer from searching the home that is also occupied by a third party where an arrest warrant issued by a judge shows the address to be that of the person named in the arrest warrant, there is evidence the person named in the arrest warrant lives at that address, and the law enforcement officer in good faith believes the person named in the arrest warrant to be present at that address?

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NO. 80-6280

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

CAROLYN HARRIS,

Appellant,

v.

STATE OF GEORGIA,

Appellee.

On Appeal to the Supreme Court of Georgia

BRIEF FOR THE APPELLEE IN OPPOSITION

STATEMENT OF THE CASE

A judge of the Municipal Court of Atlanta, Georgia, issued on March 30, 1979, an arrest warrant for Charles Davis, and the arrest warrant listed Davis' address as (1) 1717 Centra Villa, S.W., B-65, (2) 4465 Danforth Road, S.W., Atlanta, Georgia. (T. 66-67).

On April 3, 1979, at approximately 9:30 a.m. Deputy Sheriffs Paul Adams and J. L. Shockley went to 1717 Centra Villa Drive, S.W., Apt. B-65, Atlanta to serve an arrest warrant upon Charles Davis. (T. 5-6, 46-47, 55). The deputies knocked on the door for five or six minutes before the door was finally opened by Carolyn Harris. (T. 6-7, 47).

The deputies told Appellant that they had an arrest warrant for Davis and asked if he was there. (T. 7, 48). Petitioner replied that she knew Davis but that he was not there. (T. 7, 48). Because of the considerable delay in Appellant's answering

the door, Deputy Adams believed Davis was hiding inside the apartment. Appellant did not assert to the deputies that Davis did not live there. At her bench trial she failed to take the stand to rebut any of the officers' testimony. Although Appellant told officers she lived at that address, (T. 23) she presented no evidence to the officers or the trial court that Davis did not live there.

Although there were male and female garments in the clothes closet, the deputies could not find Davis in the one-bedroom apartment. (T. 8, 30). However, when Deputy Adams looked under the bed, he saw a spoon containing a white residue, a sifter containing white residue, and some scales. (T. 8, 49-50). Adams believed the substance to be an illegal drug, and later lab tests showed the substance to be cocaine. (T. 8-9, 51, 71).

After this substance was found, Appellant consented to further search of her apartment. (T. 9-10, 25, 27). However, during the search she withdrew her consent and officers obtained a search warrant. (T. 28-30). In addition to cocaine, officers also found diazepam (valium) and marijuana. (T. 71).

Appellant was indicted for three drug offenses and she had a bench trial on July 23, 1979, in the Superior Court of Fulton County, Georgia. (T. 1). The Court found her guilty and imposed concurrent sentences of five years probation and a $5,000 fine.

On direct appeal the Georgia Court of Appeals reversed the trial court, Harris v. State, 155 Ga. App. 278, 270 S.E.2d 854 (1980); but the Georgia Supreme Court reversed the Georgia Court of Appeals and reinstated the conviction. State v. Harris, 246 Ga. 759, 272 S.E.2d 719 (1980).

REASON FOR DENYING THE APPEAL

THE FOURTH AMENDMENT DOES NOT PROHIBIT A LAW ENFORCEMENT OFFICER FROM SEARCHING THE HOME THAT IS ALSO OCCUPIED BY A THIRD PARTY WHERE AN ARREST WARRANT ISSUED BY A JUDGE SHOWS THE ADDRESS TO BE THAT OF THE PERSON NAMED IN THE ARREST WARRANT, THERE IS EVIDENCE THE PERSON NAMED IN THE ARREST WARRANT LIVES AT THAT ADDRESS, AND THE LAW ENFORCEMENT OFFICER IN GOOD FAITH BELIEVES THE PERSON NAMED IN THE ARREST WARRANT TO BE PRESENT AT THAT ADDRESS.

The decisions of the appellate courts of Georgia were made prior to this Court's decision in Steagald v. United States, ___ U.S. ___, 29 Crim.L.Rptr. 3007 (1981). In that case this Court held that absent exigent circumstances police may not legally search for the subject of an arrest warrant in the home of a third party without a search warrant. Id. at 3008.

In Steagald, federal officers had a six month old arrest warrant on an individual named Ricky Lyons. Id. at 3008. An informant gave officers a telephone number in the Atlanta area where Steagald could be reached. Officers obtained the address through Southern Bell Telephone Company, and there was no evidence the arrest warrant listed the Atlanta address as Lyons' address. Id.

Also there is no evidence referred to by this Court in Steagald, other than the informant's tip about the phone number, that Lyons lived at the Atlanta address. The Government apparently conceded in the lower courts that the residence searched belonged only to Steagald. Id. at 3008-09.

However, Appellant's case is significantly different factually. The arrest warrant, issued by a judge, listed

Appellant's address as that of Charles Davis. When the officers came to the first address listed in the arrest warrant, Appellant admitted she knew Davis. Although she asserted that Davis was not there at that time, she has never asserted or testified that Davis did not also live there. Male and female clothing was in the apartment.

Therefore, other than the fact Davis was not at the address when deputies came to serve the arrest warrant, all of the evidence in Appellant's case is that Davis also lived at the residence of Appellant.

An arrest warrant is sufficient to authorize police to enter that person's residence to effect his arrest. Payton v. New York, 445 U.S. 573 (1980); see Steagald v. United States, supra at 3010, n. 7. Because Steagald had not yet been decided when the Georgia Supreme Court reached its decision, the Georgia courts have not made the factual finding as to whether Davis also lived at Appellant's residence. State v. Harris, 246 Ga. 759, 272 S.E.2d 719 (1980). However, the evidence in Appellant's case is that her residence was also the residence of Davis, so this case is controlled by Payton v. New York, supra.

CONCLUSION

For all the reasons stated, this appeal should be denied. If this Court takes any action other than denying the appeal, this Court should take no more action than simply remanding the case back to the Georgia Supreme Court for reconsideration in light of Steagald v. United States, supra.

Respectfully submitted,

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